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March 7, 2002

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Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. PRENGER
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED³

MAR 07 2002

Missouri Public
Service Commission

RE: Case No. EC-2002-277 and EC-2002-278

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **STAFF REPORT**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Bruce H. Bates
Associate General Counsel
(573) 751-7434
(573) 751-9285 (Fax)

BHB/lb
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

MAR 07 2002

Missouri Coalition for Fair Competition,)

Complainant,)

v.)

Missouri Public Service, a Division of)
UtiliCorp United Inc,)

Respondent.)

and)

Missouri Coalition for Fair Competition,)

Complainant,)

v.)

St. Joseph Light & Power, a Division of)
UtiliCorp United, Inc.,)

Respondent.)

Missouri Public
Service Commission

Case No. EC-2002-277

Case No. EC-2002-278

STAFF REPORT

COMES NOW the Staff of the Missouri Public Service Commission ("Staff" and "Commission") and for its *Report* in this matter states as follows:

1. On December 12, 2001, the Missouri Coalition for Fair Competition ("Complainant") filed complaints against Missouri Public Service ("MPS"), and St. Joseph Light & Power ("SJLP"), both divisions of UtiliCorp United, Inc. ("UtiliCorp"). On December 31, 2001, the Commission issued notices of complaints in these cases. On February 7, 2002, the Commission further issued an *Order Directing Completion of Service and Directing Filings and*

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Order Directing Staff Report and Order Setting Prehearing Conference, in which it directed Staff to “review the complaints in Case Nos. EC-2002-277 and EC-2002-278 and conduct a brief investigation into the matter presented in each complaint and file a report stating Staff’s preliminary findings”.

2. Staff has reviewed both filed complaints. Complainant alleges:

- a. the utilities are offering Heating, Ventilation, and Air Conditioning (“HVAC”) services through affiliates without indicating such HVAC services are provided by an affiliate or by a utility contractor, and without indicating a disclaimer, as required by law;
- b. the utilities are engaging in HVAC services; and
- c. the utilities are not exempt from the statutes.

3. Staff has reviewed both filed complaints, and has reviewed 4 CSR 240-2.070 - Complaints. It is Staff’s opinion that Complainant has met all filing requirements, with the exception of 4 CSR 240-2.070(5)(E). That section provides that “[t]he formal complaint shall contain the following information...A statement as to whether the complainant has directly contacted the person, corporation or public utility about which complaint is being made....” No statement was included in the filed formal complaints indicating whether Complainant had, in fact, contacted the utility directly about the complaint.

4. Staff has reviewed Sections 386.754 through 386.764, RSMo. (2000), which deal with HVAC services and the authority of the Commission. Financing by a utility is not listed or addressed in these sections as being prohibited. Section 386.756(8), RSMo (2000) states that provisions of this section shall not be construed to prohibit a utility from providing a program pursuant to an existing tariff on file with the Commission. Section 386.756.6, RSMo (2000)

states that “[t]he provisions of this section shall apply to any affiliate or utility contractor engaged in HVAC services that is owned, controlled or under common control with a utility providing regulated utility services in this state or any other state.”

5. Staff has reviewed 4 CSR 240-20.017 – HVAC Services Affiliate Transactions. Financing by a utility is not listed or addressed in this section as being prohibited. 4 CSR 240-20.017(9) states that “[t]he provisions of this section shall not be construed to prohibit a regulated electric corporation from providing emergency service, providing any service provided by law or providing a program pursuant to an existing tariff, rule or order of the commission.”

6. Staff has reviewed the filed tariffs of MPS. Tariff Sheet 58, Residential Customer Purchase Plan, allows MPS to provide financing of energy efficient technologies. Tariff Sheet 59, Residential Customer Purchase Plan (continued), provides that the revenue and expenses associated with the operation of this plan shall be subject to Commission review in all general rate proceedings.

7. Staff has also reviewed the filed tariffs of SJLP. Tariff Sheet 67, Residential Customer Purchase Plan (8.06), allows SJLP to provide financing of energy efficient technologies. Tariff Sheet 68, Residential Customer Purchase Plan (continued), provides that the revenue and expenses associated with the operation of this plan shall be subject to Commission review in all general rate proceedings.

8. Staff requested from UtiliCorp copies of documents and/or agreements associated with PowerTech Dealers mentioned in the advertisements (Complainant Exhibits 1 and 2). Staff has reviewed the materials that Utilicorp provided. The Authorized PowerTech Dealer Letter of Understanding (Staff Exhibit 1) is a letter of understanding that provides a list of responsibilities for the HVAC dealer and MPS or SJLP in order to provide service and financing to customers. It

is Staff's opinion that this does not constitute any form of ownership or control of a dealer by MPS or SJLP. Therefore, MPS and SJLP do not have to include a disclaimer that indicates that the services are provided by an affiliate or by a utility contractor, as per Section 386.756(3), RSMo and 4 CSR 240-20.017(4).

9. Staff requested from UtiliCorp copies of documents and/or agreements associated with the Comfort Pledge© mentioned in the advertisements (Complainant Exhibits 1 and 2). The Comfort Pledge© (Staff Exhibit 2) offered by MPS and SJLP is a pledge that offers to refund the customer up to \$500 if the customer is not satisfied with his/her new system up to one year after installation. The offer is not based on the equipment operating properly. In addition, the offer does not require the customer to show that the equipment is not functioning properly. Any specific warranty for the new equipment is offered by the PowerTech Dealers. Warranty of HVAC equipment is identified as a HVAC service in Section 386.754(2), RSMo, and 4 CSR 240-20.017(D).

10. It is Staff's opinion, based on its preliminary investigation, that the PowerTech dealers are not affiliates of MPS or SJLP. The Authorized PowerTech Dealer Letter of Understanding (Staff Exhibit 1) does not give direct or implied control or partial control of the HVAC dealer's company to MPS or SJLP. The statutes and rules both state that they apply only to affiliates of utilities.

11. It is Staff's opinion, based on its preliminary investigation, that the financing of energy efficient heat pumps by MPS and SJLP is not in violation of the HVAC statutes or rules. The statutes and rules both identify specific items, which are HVAC services, and financing is not listed among them. Also, both the statutes and rules state that a utility is not prohibited from

providing a program identified in an existing tariff. Both MPS and SJLP have tariffs on file which allow financing of HVAC equipment.

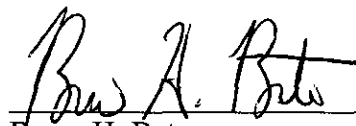
12. Staff is unable to determine if MPS or SJLP are exempt from the provisions of the statutes and rules. Staff requested information from UtiliCorp to support its claim of having an exemption under Section 386.756(7), RSMo and 4 CSR 240-20.017(8). Section 386.756(7) provides that "[a] utility engaging in HVAC services in this state five years prior to August 28, 1998, may continue providing, to existing as well as new customers, the same type of services as those provided by the utility five years prior to August 28, 1998." At this time, no such information has been forthcoming from UtiliCorp.

13. Staff members David Elliott and Lena Mantle participated in the preparation of this *Report*.

WHEREFORE, Staff prays that the Commission accept its *Report* in this matter.

Respectfully submitted,

DANA K. JOYCE
General Counsel

A handwritten signature in black ink, appearing to read "Bruce H. Bates", is written over a horizontal line.

Bruce H. Bates
Associate General Counsel
Missouri Bar No. 35442

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
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bbates@mail.state.mo.us (e-mail)

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel or parties of record as shown on the attached service list this 7th day of March 2002.



Bruce H. Bates

MISSOURI PUBLIC SERVICE

ENERGYONESM

Authorized PowerTech Dealer Letter of Understanding

Missouri Public Service is pleased to offer this **Authorized PowerTech Dealer** program agreement to [Dealership name here]. By signing this agreement, [Dealership name here] (hereafter referred to as "Dealer") and Missouri Public Service (hereafter referred to as MPS) mutually agree to the stipulations listed in this document. This agreement supersedes all previously issued Letters of Understanding.

Statement of Policy:

MPS strives to provide its customers with the best quality and professional, prompt service in all respects. MPS's reputation in this area is of great importance and therefore, MPS expects all Dealers to provide top quality service in a courteous, prompt and professional manner. Additionally, in regards to Dealers, services provided to MPS customers, MPS expects all Dealers to conduct themselves and manage their businesses in a similarly professional manner with a focus on quality, continuing education/training, fairness and accuracy in services.

I. Missouri Public Service Responsibilities

1. MPS will provide **low-cost financing** for qualified customers in MPS's service territory. Financing terms are for up to seven (7) years when customers have an electric heat pump system installed by an Authorized PowerTech Dealer. Seasonal Energy Efficiency Rating (SEER) for the heat pump must exceed 10.0. Other conditions apply and are detailed in a separate Customer Finance Program brochure.
2. MPS will provide **heat pump installation training**, and/or other training courses deemed relevant, for the Dealer to become and/or remain an Authorized PowerTech Dealer.
3. MPS will provide **advertising and promotional material co-op reimbursement** for Authorized PowerTech Dealer marketing expenses when those materials promote heat pumps. Guidelines concerning reimbursement are described in the "MPS Trade Ally Co-op Reimbursement Program" document.
4. MPS will provide to the Dealer **promotional and merchandising materials** promoting heat pumps, customer testimonials, financing programs, Dealer's participation in the program and other materials when available and appropriate.

5. MPS will provide a **reduced electric rate** to all residential customers in MPS's electric service territories who install a heat pump system. This special rate shall be in effect every October through May and will reduce the per kilowatt hour charge. This reduced winter electric rate code is referred to as "070."
6. MPS will, at its own cost, develop a variety of promotional literature and/or media advertising regarding replacement or maintenance of heating and/or cooling equipment to generate **qualified leads**, distributed exclusively to Authorized PowerTech Dealers.
7. MPS will provide to all customers the **Comfort Pledge®** on heat pump systems purchased from an Authorized PowerTech Dealer and financed through the MPS Customer Finance Program. The Pledge includes a credit to the customer's account of up to \$500 for the difference between the cost of a comparable air conditioner and the heat pump if the heat pump fails to satisfy the customer's comfort needs. Other conditions apply and are described in the Comfort Pledge certificate. Dealers will be provided promotional literature for end-use customers describing this program.
8. MPS will, when appropriate, endeavor to promote Authorized PowerTech Dealers to new home builders as the contractor of choice where those builders are erecting homes in subdivisions committed to electric heat systems.

II. Authorized PowerTech Dealer Responsibilities

9. Dealer will **promote heat pumps as the primary solution** to heating and cooling requirements of all MPS electric customers.
10. Dealer agrees to sell and install a **minimum of six (6) replacement heat pumps** in 1999 in order to qualify for program benefits.
11. Dealer agrees to assume 50% of the cost associated with the Comfort Pledge, when this Pledge is offered to customers who finance their system with MPS.
12. Dealer will make every effort to **respond to MPS-generated leads in a timely manner**, not to exceed 48 hours, and in less time if possible. This assures all customer expectations regarding responsiveness will be met by both MPS and the Dealer.
13. Dealer will perform all installation work and services in a professional and competent manner, and will furnish, and be solely responsible for, all equipment and labor necessary to complete the work, at its sole cost, risk, and expense. System installations **must conform to the MPS Residential HVAC Application and Installation Guideline**. (See item 20 for additional information.)
14. Dealer agrees to offer a **Free 5-year parts and labor warranty** component to all heat pump systems sold to MPS electric customers.

15. Dealer agrees to complete **training(s)** to become/remain an Authorized PowerTech Dealer.
16. Dealer agrees to **advertise the merits of heat pumps** using preapproved advertising materials and reputable media/methods in order to be eligible for co-op reimbursements.
17. Dealer is, and shall be deemed to be, an **independent contractor**. Dealer shall not be deemed to be, nor hold itself out, as an agent or employee of Missouri Public Service.
18. Dealer will comply with all applicable federal, state, and local laws, orders, rules, and regulations, including those pursuant to workers compensation, comprehensive general liability, and automobile liability. Dealer will submit appropriate certificates of compliance upon request.
19. Dealer agrees to do everything in his authority and knowledge to **resolve customer complaints** in a timely manner pertaining to heat pump comfort, noise, efficiency, installation, and maintenance during the first year of operation. Further, Dealer agrees to assist MPS representatives to resolve all complaints related to customer dissatisfaction with the heat pump.
20. Dealer agrees to provide heat pump installations in accordance with **manufacturers' specifications and ARI-rated combination of components** as detailed in the MPS Installation Guidelines.
21. Dealer recognizes that Missouri Public Service reserves the right to perform on-site inspections of recent heat pump installations, and that should these installations not be in accordance with above-mentioned guidelines, reserves the right to recall Dealer to the site within 5 business days to make necessary repairs or adjustments which will result in successful reinspection.
22. Dealer also recognizes that Missouri Public Service may implement an evaluation program which may include a telephone survey of Dealer's customers. MPS will provide pertinent constructive feedback to the Dealer. Dealer will implement any changes deemed necessary to maintain the highest quality standards. Consistent, regular negative ratings can result in that Dealer's termination from the program.
23. Dealer will provide **written proposals** to all MPS customers for the heat pump selected to solve the customer's needs. This proposal must include the model numbers, the efficiency rating, the capacity, and the manufacturer's brand name, in addition to the necessary controls, duct-work modification, accessories, and total cost of labor, materials, and taxes.
24. Dealer also agrees to provide to the customer, after the sale, information on maintenance and operating instructions either supplied by the manufacturer or Missouri Public Service.

Termination: Both Dealer and Missouri Public Service agree that this Letter of Understanding can be voided by either party upon written notification.

FOR MISSOURI PUBLIC SERVICE

Signature _____

Print/Type Name _____

Title _____

Date _____

FOR DEALER

Signature _____

Print/Type Name _____

Title _____

Dealership Name _____

Address _____

City/State/Zip _____

Phone/Fax _____

Date _____

Missouri Public Service **Comfort Pledge**

Missouri Public Service is so confident that you will enjoy the comfort and economy of an energy efficient heat pump system that it offers you its Comfort PledgeSM.

This pledge states that if after one full year, you are not completely satisfied with your heat pump system, you will be eligible to receive the difference between the cost of your heat pump system and a conventional air conditioner, up to \$500, and your heat pump system will be converted to work exclusively as an air conditioner.

To be eligible for the Comfort Pledge simply have your new heat pump system financed through Missouri Public Service, and installed by one of Missouri Public Service's Authorized PowerTechSM Dealers.

The Comfort Pledge is valid, after the first full year of operation, for up to one year, and does not replace the equipment manufacturer's warranty or the service guarantee of the installing dealer. If you convert your heat pump system to a conventional air conditioner, your reduced electric space heat rate for the winter months (October through May) will no longer apply.

Call 800-526-3348 for answers to all your questions regarding Missouri Public Service's Comfort Pledge.

Name

Address

City/State/Zip Code

Telephone

Date of Installation

Authorized PowerTech Dealer

Date Issued

MISSOURI PUBLIC SERVICE
ENERGYONE.

A Division of UtiliCorp United

White - Customer

Yellow - Dealer

Pink - MPS

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St. Joseph Light & Power **Comfort Pledge**

St. Joseph Light & Power is so confident that you will enjoy the comfort and economy of an energy efficient heat pump system that it offers you its Comfort PledgeSM.

This pledge states that if after one full year, you are not completely satisfied with your heat pump system, you will be eligible to receive the difference between the cost of your heat pump system and a conventional air conditioner, up to \$500, and your heat pump system will be converted to work exclusively as an air conditioner.

To be eligible for the Comfort Pledge simply have your new heat pump system financed through St. Joseph Light & Power, and installed by one of St. Joseph Light & Power's Authorized PowerTechSM Dealers.

The Comfort Pledge is valid, after the first full year of operation, for up to one year, and does not replace the equipment manufacturer's warranty or the service guarantee of the installing dealer. If you convert your heat pump system to a conventional air conditioner, your reduced electric space heat rate for the winter months (October through May) will no longer apply.

Call 800-526-3348 for answers to all your questions regarding St. Joseph Light & Power's Comfort Pledge.

Name _____

Address _____

City/State/Zip Code _____

Telephone _____

Date of Installation _____

Authorized PowerTech Dealer _____

Date Issued _____

ST. JOSEPH LIGHT & POWER

ENERGYONE.

A Division of UtiliCorp United

White - Customer

Yellow - Dealer

Pink - MPS

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Service List for:
Case No. EC-2002-277 and EC-2002-278
March 7, 2002 (lb)

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